

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1657 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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RAMESH KHODIBHAI SOLANKI

Versus

STATE OF GUJARAT

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Appearance:

MR PRAJAPATI for MR. PB MAJMUDAR for Petitioner  
MR BY MANKAD, ld.AGP for Respondents Nos.1 to 3  
No one appears for respondent no.4 despite service.4

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 17/08/1999

ORAL JUDGEMENT

The petitioner was elected Sarpanch of Gram Panchayat Pursa, Taluka Amod, Dist. Bharuch. It is claimed by the petitioner that he was elected as Sarpanch on 8th April 1996. This Special Civil Application has been filed by the petitioner against the order dated 17th October 1997 passed by the Dist. Development Officer, Bharuch, placing him under suspension under Sec.59(1) of

the Gujarat Panchayat Act. The petitioner has also approached the Addl. Development Commissioner, but the Addl. Development Commissioner has also upheld the order passed by the Dist. Development Officer and has rejected the petitioner's application, by his order dated 22nd January 1998.

2. When the matter came up before the Court on 6th March 1999, an order to the following effect was passed by the Court:

"Shri P.B.Majmudar for the petitioner.

Notice to respondents returnable on 19th March 1999 to show cause as to why this Special Civil Application should not be admitted, heard & finally disposed of at the admission stage."

3. This order is as good as Rule. So far no reply whatsoever has been filed on behalf of any of the respondents.

4. Learned Counsel for the petitioner has submitted that an FIR dated 3rd July 1996, a copy of which is enclosed as Annexure.A to the petition was filed against the petitioner and on that basis it has been mentioned in the impugned order dated 17th October 1997 that the case against the petitioner was under Sec.323, 504, 506 and 204 of the Indian Penal Code. A notice was, therefore, given to the petitioner and he was asked to file the written reply. The petitioner filed the written reply dated 6th August 1996 and submitted that his opponents had lost against him who were out to deprive the petitioner from his office and has denied the allegations levelled against him. It is submitted that asking any members of the house not to throw the dirt and filth on the site does not constitute any offence. It has been argued by the learned Counsel for the petitioner that even if all the allegations as levelled in the FIR at Annexure.A are assumed to be correct without admitting the same, they do not constitute any offence involving any moral turpitude against the petitioner so as to warrant his suspension from the elective office under sec.59 of the Act.

5. I have gone through the contents of the FIR and the orders dated 17th October 1997 and 22nd January 1998 and I find that the authorities have not applied their mind so as to point out as to whether there was any offence involving allegations of moral turpitude against the petitioner. Even the allegations of use of Kadali or Stick are against the petitioner's son or by the

petitioner's brother. On that basis, no criminal liability involving moral turpitude can be fastened against the petitioner. Prima facie, it does not appear either from the contents of the FIR or from the order that the petitioner's conduct in the incident as above involves any offence of moral turpitude. On the contrary, it appears that the petitioner was only discharging his duty as Sarpanch when he tried to refrain the author of the FIR from throwing the dirt and filth at the open space of the site.

6. Be that as it may, it is very clear from the facts of the case itself that no offence for which the chargesheet has been filed against the petitioner involves the allegations of moral turpitude in the facts of this case. The impugned orders placing the petitioner under suspension as passed by the Dist.Development Officer on 17th October 1997 and as upheld by the Addl. Development Commissioner by his order dated 22nd January 1998 are hereby quashed and set aside and it is ordered that the petitioner stands relegated to the position which he was holding prior to passing of the impugned order dated 17th October 1997 and the respondents shall henceforth not interfere with the petitioner's functioning and working as the Sarpanch of the Gram Panchayat Pursa, Taluka Amod, Dist. Bharuch. This order takes effect immediately and forthwith. Rule is made absolute in terms as aforesaid. No order as to costs. Direct service is permitted.

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